

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
MARKEL AMERICAN INSURANCE COMPANY,

Petitioner,

-against-

THOMAS SILVER,

Respondent.
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**DECLARATION
IN OPPOSITION
TO PETITION TO
APPOINT UMPIRE**

Civil Action No.: 12-CV-2932
(ADS)(GRB)

SCOTT B. FISHER, an attorney duly admitted to practice law before the Courts of the State of New York and the United States District Court for the Eastern District of New York, declares, pursuant to 28 U.S.C. § 1746, the following to be true under the penalty of perjury:

1. I am a partner with the law firm of Jaspan Schlesinger LLP, attorneys for respondent, Thomas Silver (“Silver” or “Respondent”), in the above-captioned proceeding. As such, I am fully familiar with the facts and circumstances in this matter, based upon a review of the material and files maintained by this firm and Respondent, except where stated upon information and belief.

2. I make this declaration in support of Respondent’s Answer and Memorandum of Law in Opposition to the Petition to Appoint Umpire (the “Petition”) filed by petitioner, Markel American Insurance Company (“Petitioner” or “MAIC”). The legal bases in opposition to the Petition are set forth at length in the accompanying Memorandum of Law in Opposition to the Petition, to which the Court is respectfully referred.

3. Attached as Exhibit 1 is a true and accurate copy of a letter, dated March 16, 2012, from James E. Mercante, Esq. to Respondent.

4. Attached as Exhibit 2 is a true and accurate copy of the cover sheet accompanying the check issued by or on behalf of MAIC to Respondent in the amount of \$22,882.81 indicating the check date as May 24, 2012, together with the Claim Evaluation Sheet prepared by MAIC, dated January 11, 2012, showing the itemization of the \$22,882.81 loss determination.

5. Upon information and belief, Respondent has not cashed or deposited the check tendered by MAIC in May 2012, in the amount of \$22,882.21.

6. Attached as Exhibit 3 is a true and accurate copy of the print-out of the Affiliate Members List of the Society of Accredited Marine Surveyors, Inc., from the website located at <http://www.marinesurvey.org/affiliate-members.html>, last visited July 12, 2012. Counsel for MAIC in this proceeding is listed as an affiliate member on page 10 of 13 of this list.

7. Attached as Exhibit 4 is a true and accurate copy of the print-out of the US Surveyors Association Members in New York, from the website located at http://www.navsurvey.com/new_york.htm, last visited July 13, 2012.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Garden City, New York
July 13, 2012

/s/Scott B. Fisher
SCOTT B. FISHER